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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/594,462
Filing Date: July 30, 2007
Appellant(s): KONNO ET AL.

Sanjeev K. Dhand
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 21, 2010 appealing from the Office action mailed September 16, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0064149 Elliott et al. 05-2002

2004/0088348	**Yeager et al.**	**05-2004**
2004/0111575	**Armilli et al.**	**06-2004**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5-20, 22, 24-32, 34-41 and 43-59 of the current application (effective filing date: Sep. 27, 2006) are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al. (US 20020064149; pub. date: May 30, 2002), hereinafter “Elliott” in view of Yeager et al. (US 20040088348; pub. date: May 06, 2004), hereinafter “Yeager”, and further in view of Arimilli et al. (US 20040111575; filed: Dec. 5, 2002), hereinafter “Arimilli”.

As to claim 1, Elliott discloses, a computer-implemented method for transferring a data file between a sending device and receiving user equipment, the method comprising (Elliott: abstract; [0457]):

assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified (Elliott: [0457]; [1702], message is transferred after assessing the integrity or error inspection to assess the data transfer);

in response to finding that the data file is to be modified, creating a data file of the original data file and modifying the data file, based on said information, into a form suitable for transferring (abstract; [0457], after error inspection the data is transferred in its original form);

wherein said information used in the assessing and modifying comprises an indication of capacity and/or format of a message which is to be used by the receiving user equipment to send the received modified clone data file to another device, and wherein the assessing and modifying comprise assessing the data file and modifying the clone data file to be compatible with said message (Elliott: [0457]; [0463], a gateway converts incompatible data if necessary; [1702], extending and modifying objects through deriving new kind of objects);

transferring the modified data file from the sending device to the receiving user equipment ([0457]).

Elliott, however, does not explicitly disclose, “various transfer methods”;

Elliott also does not explicitly disclose creation of a clone data file of the orginal data file.

Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]) and further emphasizes on optimizing and reliability of transporting data.

.

Both Elliott and Yeager are of the same field of endeavor, they specifically teach managing distribution of contents (Elliott: [0004]); Yeager: abstract).

It would have been obvious to one of the ordinary skill in the art at the time of Appellant’s invention to incorporate the teachings of Yeager into Elliott of system and method for providing requested quality of service in a hybrid network, that would have allowed users of Elliott to have an useful method, to create an efficient data transfer methods (Yeager: [0460]).

Arimilli further discloses, creation of a clone data file of the original data file (Arimilli: [0066]).

Elliott, Yeager and Arimilli are of the same field of endeavor, they specifically teach managing distribution of contents (Elliott: [0004]); Yeager: abstract; Arimilli: abstarct).

It would have been obvious to one of the ordinary skill in the art at the time of Appellant's invention to incorporate the teachings of Yeager and Arimilli into Elliott of system and method for providing requested quality of service in a hybrid network, that would have allowed users of Elliott to have an useful method, to create an efficient data transfer methods by creating clone data file of the original data file (Yeager: Arimilli: [0066]).

As to claim 2, Elliott as modified discloses, the method according to claim 1, further comprising selecting the data file to be transferred from a plurality of data files (Elliott: [0463]).

As to claim 3, Elliott as modified discloses, the method according to claim 1, wherein the step of assessing comprises carrying out said assessing by the sending device (Elliott: [0453]).

As to claim 4, the claim is cancelled by the Appellant.

As to claim 5, Elliott as modified discloses, the method according to claim 1, wherein the step of modifying comprises modifying the data file based on capacity limitations of the transfer method (Elliott: [0458]; [0584]).

As to claim 6, Elliott as modified discloses, the method according to claim 5, wherein the step of modifying comprises modifying the data file based on a maximum file size supported by the transfer method (Elliott: [0457]-[0458]).

As to claim 7, Elliott as modified discloses, the method according to claim 1, wherein the step of modifying comprises modifying the data file based on capacity limitations of the receiving user equipment (Elliott: [1667]).

As to claim 8, Elliott as modified discloses, the method according to claim 7, wherein the step of modifying comprises modifying the data file based on a maximum file size supported by the receiving user equipment (Elliott: [0085]; [0457]).

As to claim 9, Elliott as modified discloses, the method according to claim 1, wherein the step of modifying comprises compressing the data file (Elliott: [0441]).

As to claim 10, Elliott as modified discloses, the method according to claim 1, wherein the step of transferring the data file comprises transferring an image file (Elliott:

[3004]; [0030]; [0099]).

As to claim 11, Elliott as modified discloses, the method according to claim 10 wherein the step of modifying comprises resizing the image file (Elliott: [3004]).

As to claim 12, Elliott as modified discloses, the method according to claim 11 wherein the step of modifying further comprises re-scaling the re-sized image file (Elliott: [3005]).

As to claim 13, Elliott as modified discloses, the method according to claim 1, wherein the step of modifying comprises changing the format of the data file (Elliott: [0081]).

As to claim 14, Elliott as modified discloses, the method according to claim 1, further comprising obtaining in the sending device an indication relating to the transfer method (Elliott: [0453]).

As to claim 15, Elliott as modified discloses, the method according to claim 14, wherein the step of obtaining the indication relating to the transfer method comprises determining by the sending device an active transfer method capable of transferring the data file to the receiving user equipment (Elliott: [0458]).

As to claim 16, Elliott as modified discloses, the method according to claim 14, wherein the step of obtaining the indication relating to the transfer method comprises receiving in the sending device the indication sent by the receiving user equipment (Elliott: [0457]).

As to claim 17, Elliott as modified discloses, the method according to claim 14, wherein the step of obtaining the indication relating to the transfer method comprises displaying to a user of the sending device a list of transfer methods and allowing the user to select an indication belonging to the list (Elliott: [0103]).

As to claim 18, Elliott as modified discloses, the method according to claim 1, further comprising obtaining in the sending device an indication relating to the receiving user equipment (Elliott: [0453] -[0457]).

As to claim 19, Elliott as modified discloses, the method according to claim 18, wherein the step of obtaining the indication relating to the receiving user equipment comprises receiving in the sending device the indication sent by the receiving user equipment (Elliott: [0457]).

As to claim 20, Elliott as modified discloses, the method according to claim 18, wherein the step of obtaining the indication relating to the receiving user equipment comprises displaying to a user of the sending device a list of receiving user equipment

and allowing the user to select an indication belonging to the list (Elliott: [0712]; [0875]-([0876]).

Claim 21. (canceled).

As to claim 22, the claim can be rejected for the same reason as claim 1. In addition, Elliott discloses, a device configured to: communicate with a receiving user equipment for transferring a data file from the device to the receiving user equipment (abstract; [0457]);

assess, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified ([0457]);

in response to finding that the data file is to be modified, create a data file of the original data file and modify the data file, based on said information, into a form suitable for transferring; and transfer the data file to the receiving user equipment (abstract; [0457]).

Elliott, however, does not explicitly disclose, “various transfer methods”;

Elliott also does not explicitly disclose, creation of a clone data file of the orginal data file.

Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]).

Arimilli, however, discloses, creation of a clone data file of the orginal data file (Arimilli: [0066]).

As to claim 23, the claim has been cancelled by the Appellant.

As to claim 24, Elliott as modified discloses, the device according to claim 22, wherein the device is configured to carry out the modification by compressing the data file (Elliott: [0441]).

As to claim 25, Elliott as modified discloses, the device according to any of claim 22, wherein the data file is an image file (Elliott: [0030]; [0099]).

As to claim 26, Elliott as modified discloses, the device according to claim 25, wherein the device is configured to carry out the modification by re-sizing the image file (Elliott: [3004]).

As to claim 27, Elliott as modified discloses, the device according to claim 26, wherein the device is configured to carry out the modification by re-scaling the re-sized

image file (Elliott: [3004]).

As to claim 28, Elliott as modified discloses, the device according to any of claim 22, wherein the device is configured to carry out the modification by changing the format of the data file (Elliott: [0080]).

As to claim 29, Elliott as modified discloses, the device according to any of claim 22, further configured to determine an active transfer method capable of transferring the information to the receiving user equipment (Elliott: [0458]).

As to claim 30, Elliott as modified discloses, the device according to any of claim 22, further configured to receive an indication of the transfer method and/or the receiving user equipment from the receiving user equipment (Elliott: [0457]).

As to claim 31, Elliott as modified discloses, the device according to any of claim 22, further configured to display to a user of the device a list of transfer methods and/or the receiving user equipment and to allow the user to select an indication belonging to the list (Elliott: [0103]).

As to claim 32, the claim can be rejected for the same reason as claim 1. In adition, Elliott discloses, a device comprising: transferring means for transferring a data file from the device to receiving user equipment (Elliott: abstract; [0457];

assessing means for assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified before transferring (abstract; [0457]);

creating means for creating a data file of the original data file (abstract; [0457]);

modifying means for modifying, in response to finding that the data file is to be modified, the data file, based on said information, into a form suitable for transferring ([0457]).

Elliott, however, does not explicitly disclose, “various transfer methods”;

Elliott also does not explicitly disclose creation of a clone data file of the orginal data file.

Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]).

Arimilli, however, discloses, creation of a clone data file of the orginal data file (Arimilli: [0066]).

As to claim 33, the claim has been cancelled by the Appellant.

As to claim 34, the claim can be rejected for the same reason as claim 1. In addition, Elliott discloses, an arrangement configured to transfer a data file from a sending device and a receiving user equipment, the arrangement being further configured to:

assess, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified (abstract; [0457]);

in response to finding that the data file is to be modified, create data files of the original data file and modify the data file, based on said information, into a form suitable for transferring ([0457]).

Elliott, however, does not explicitly disclose, “various transfer methods”;

Elliott also does not explicitly disclose, creation of a clone data file of the orginal data file.

Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]).

Arimilli, however, discloses, creation of a clone data file of the original data file (Arimilli: [0066]).

As to claim 35, Elliott as modified discloses, the arrangement according to claim 34, wherein the receiving user equipment comprises one of a mobile user equipment, a mobile station and a personal digital assistant (Elliott: [3838], pager, mobile media).

As to claim 36, Elliott as modified discloses, the arrangement according to claim 34, wherein the sending device comprises a digital camera (Elliott: [2265], video camera).

As to claim 37, Elliott as modified discloses, the arrangement according to any of claim 34, wherein the transfer method is selected from a group comprising: universal serial bus port connection. Pop-Port connection, other galvanic connection, Bluetooth connection, infrared connection, wireless local area network connection, other wireless connection, direct connector connection or optical connection (Elliott: [0304]; [0613], LAN, wireless connections; [0636], providers of wireless network)).

As to claim 38, Elliott as modified discloses, the arrangement according to any of claim 34, wherein the sending device and the receiving user equipment are stand-alone

devices (Elliott: [2160]; stand-alone devices).

As to claim 39, the claim can be rejected for the same reason as claim 1. In addition, Elliott discloses, a computer program product embodied on a computer-readable medium for transferring a data file between a sending device and a receiving user equipment, the computer program product comprising (Elliott: abstract; [0457]):

Computer code for: assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified (Elliott: abstract; [0457]);

in response to finding that the data file is to be modified, creating a data file of the original data file and modifying the data file, based on said information, into a form suitable for transferring abstract; (Elliott: [0457]); and

transferring the modified data file from the sending device to the receiving user equipment (Elliott: [0457]).

Elliott, however, does not explicitly disclose, “various transfer methods”;

Elliott also does not explicitly disclose creation of a clone data file of the orginal data file.

Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]).

Arimilli, however, discloses, creation of a clone data file of the orginal data file (Arimilli: [0066]).

As to claim 40, Elliott as modified discloses, the computer program product according to claim 39, further comprising computer code for selecting the data file to be transferred from a plurality of data files (Elliott: [0463]).

As to claim 41, Elliott as modified discloses, , the computer program product according to claim 39, wherein the computer code for assessing further comprises computer code for carrying out said assessing by the sending device (Elliott: [0453]).

As to claim 42, the claim has been cancelled by the Appellant.

As to claim 43, Elliott as modified discloses, the computer program product according to claim 39, wherein the computer code for modifying further comprises computer code for modifying the data file based on capacity limitations of the transfer method (Elliott: [0458]; [0584]).

As to claim 44, Elliott as modified discloses, the computer program product according to claim 43, wherein the computer code for modifying further comprises computer code for modifying the data file based on a maximum file size supported by the transfer method (Elliott: [0457]-[0458]).

As to claim 45, Elliott as modified discloses, the computer program product according to claim 39, wherein the computer code for modifying further comprises computer code for modifying the data file based on capacity limitations of the receiving user equipment (Elliott: [1667]).

As to claim 46, Elliott as modified discloses, the computer program product according to claim 45, wherein the computer code for modifying further comprises computer code for modifying the data file based on a maximum file size supported by the receiving user equipment (Elliott: [1667]).

As to claim 47, Elliott as modified discloses, the computer program product according to claim 39, wherein the computer code for modifying further comprises computer code for compressing the data file (Elliott: [0441]).

As to claim 48, Elliott as modified discloses, the computer program product according to claim 39, wherein the computer code for transferring the data file further

comprises computer code for transferring an image file (Elliott: [3004]; [0030]; [0099]).

As to claim 49, Elliott as modified discloses, the computer program product according to claim 48, wherein the computer code for modifying further comprises computer code for resizing the image file (Elliott: [3005]).

As to claim 50, Elliott as modified discloses, the computer program product according to claim 49, wherein the computer code for modifying further comprises computer code for re-scaling the re-sized image file (Elliott: [3005]).

As to claim 51, Elliott as modified discloses, the computer program product according to claim 39, wherein the computer code for modifying further comprises computer code for changing the format of the data file (Elliott: [0081]).

As to claim 52, Elliott as modified discloses, the computer program product according to claim 39, further comprising computer code for obtaining in the sending device an indication relating to the transfer (Elliott: [0453]).

As to claim 53, Elliott as modified discloses, the computer program product according to claim 52, wherein the computer code for obtaining the indication relating to the transfer further comprises computer code for determining by the sending device an active transfer method capable of transferring the data file to the receiving user

equipment (Elliott: [0458]).

As to claim 54, Elliott as modified discloses, the computer program product according to claim 52, wherein the computer code for obtaining the indication relating to the transfer further comprises computer code for receiving in the sending device the indication sent by the receiving user equipment (Elliott: [0103]).

As to claim 55, Elliott as modified discloses, the computer program product according to claim 52, wherein the computer code for obtaining the indication relating to the transfer further comprises computer code for displaying to a user of the sending device a list of transfer methods and allowing the user to select an indication belonging to the list (Elliott: [0712]; [0875]-[[0876]).

As to claim 56, Elliott as modified discloses, the computer program product according to claim 39, further comprising computer code for obtaining in the sending device an indication relating to the receiving user equipment (Elliott: [0103]).

As to claim 57, Elliott as modified discloses, the computer program product according to claim 56, wherein the computer code for obtaining the indication relating to the receiving user equipment further comprises computer code for receiving in the sending device the indication sent by the receiving user equipment (Elliott: [0457]).

As to claim 58, Elliott as modified discloses, the computer program product according to claim 56, wherein the computer code for obtaining the indication relating to the receiving user equipment further comprises computer code for displaying to a user of the sending device a list of receiving user equipment and allowing the user to select an indication belonging to the list (Elliott: [0712]; [0875]-[[0876]).

68. Claim 59 can be rejected for the same reason as claim1 and its dependent claims.

Response to Arguments

70. Appellant's arguments filed 06/05/2009, with respect to claims 1-3, 5-20, 22, 24-32, 34-41 and 43-59 have been fully considered but they are not persuasive, for examiner's response see discussion below.

As explained earlier, Elliott discloses, a computer-implemented method for transferring a data file between a sending device and receiving user equipment, the method comprising (Elliott: abstract; [0457]): assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified (Elliott: [0457]; [1702], message is transferred after assessing the integrity or error inspection); in response to finding that the data file is to be modified, creating a data file of the original data file and modifying the data file, based on said information, into a

form suitable for transferring (abstract; [0457], after error inspection the data is transferred in its original form); wherein said information used in the assessing and modifying comprises an indication of capacity and/or format of a message which is to be used by the receiving user equipment to send the received modified clone data file to another device, and wherein the assessing and modifying comprise assessing the data file and modifying the clone data file to be compatible with said message (Elliott: [0457]; [0463], a gateway converts incompatible data if necessary; [1702], extending and modifying objects through deriving new kind of objects); transferring the modified data file from the sending device to the receiving user equipment ([0457]). Elliott, however, does not explicitly disclose, “various transfer methods”; Elliott also does not explicitly disclose creation of a clone data file of the original data file.Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]) and further emphasizes on optimizing and reliability of transporting data. Arimilli further discloses, creation of a clone data file of the original data file (Arimilli: [0066]).

Appellant’s arguments: Claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 20020064149 to Elliott et al. (hereinafter "Elliott") in view of U.S. Patent Application No. 20040088348 to Yeager et al. (hereinafter "Yeager"). Appellant respectfully traverses the rejection for at least the following reasons. Embodiments of the present invention relate to the transfer of files between a sending device and receiving user equipment. Transfer of such files may require accommodation of certain limitations. For example, as noted in the specification,

"[t]o be able to transfer the file from the sending device, such as a digital camera, to the receiving user equipment, such as a mobile station, the sending device needs to re-size the files to fit to the limitation." Specification, page 6, lines 1-3. In accordance with embodiments of the present invention, information relating to the transfer method and/or the receiving user equipment is used to assess if the data file is to be modified. The assessment may be used to accordingly modify the data file. Accordingly, independent claim 1 recites "**assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified**." Independent claims 22, 32, 34 and 39 each recite a similar feature. In another aspect, independent claim 33 recites user equipment with provides an indication relating to such information. The cited references, either alone or in combination, fail to teach or suggest at least this feature of the present invention. Specifically, Elliot discloses a system for routing telephone calls, data and other information through a hybrid network. There is no teaching or suggestion in Elliot of any modification to the data being transferred. According to the disclosure of Elliot profile information is used for routing, billing, monitoring, reporting and other media control functions. Thus, Elliot fails to teach or suggest any assessment of whether any data file to be transferred is to be modified. Yeager fails to cure this deficiency. Yeager is cited by the Examiner as disclosing "various transfer methods." Office Action dated January 25, 2008, Page 3. The Office Action does not cite Yeager as disclosing the above-noted feature of the pending claims. After a review of the cited portions of Yeager, Appellant's representative has found no disclosure in Yeager of any assessment of whether any data file to be

transferred is to be modified. Thus, Yeager fails to teach or suggest at least the above-noted feature of the pending claims. In order to establish a prima facie case of obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. § 2143. Since neither Elliot nor Yeager teaches or suggests at least the above-noted feature of the pending claims, the Office Action fails to establish a prima facie case of obviousness. Accordingly, independent claims 1, 22, 32, 33, 34 and 39 are patentable. Claims 2-20 depend, either directly or indirectly, from allowable claim 1 and are, therefore, patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole. Similarly, claims 23-31 depend from allowable claim 22, claims 35- 38 depend from allowable claim 34, and claims 40-58 depend from allowable claim 39. Therefore, claims 23-31, 35-38 and 40-58 are patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole.

Examiner's response: As explained earlier in the office action, Elliott discloses, a method for transferring a data file between a sending device and a receiving user equipment, the method comprising: assessing, based on information relating to a transfer method and/or receiving user equipment, if the data file is to be modified; in response to finding that the data file is to be modified, modifying the data file, based on said information, into a form suitable for transferring (abstract; [0457]); and transferring the data file from the sending device to the receiving user equipment ([0457]). Elliott,

however, does not explicitly disclose, “various transfer methods”; Yeager, on the other hand, discloses, “various transfer methods” (Yeager: [0460]).

Elliott, in paragraph [0004] discloses, [0004] according to a broad aspect of a preferred embodiment of the invention, telephone calls, data and other multimedia information is routed through a hybrid network which includes transfer of information across the internet utilizing telephony routing information and internet protocol address information. A telephony order entry procedure captures complete user profile information for a user. This profile information is used by the system throughout the telephony experience for routing, billing, monitoring, reporting and other telephony control functions. Users can manage more aspects of a network than previously possible and control network activities from a central site, while still allowing the operator of the telephone system to maintain quality and routing selection. The hybrid network also contains logic for responding to requests for quality of service and reserving the resources to provide the requested services.

Moreover, Yeager in paragraph [0078] discloses embodiments of a system and method for implementing mobile agents in peer-to-peer (P2P) networking environments are described. A mobile agent may be software configured to operate on different nodes in a network and gather information or perform some service on host nodes in the network for a program, system, or user. For example, a mobile agent may be created on one node in a network, start executing on that node, be transferred to

another node, and continue executing on that other node. A mobile agent may be configured to perform one or more operations on network nodes hosting the mobile agent. A mobile agent may be configured to navigate through the network from node to node according to an itinerary.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/F. Q./

Examiner, Art Unit 2164

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